

## Message Text

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SUBJ: GENERAL LEGAL PROBLEMS ENCOUNTERED BY UNITED STATES CITIZENS  
ABROAD AND TRAVEL ADVISORIES

REF: STATE 173247, DEPT'S A-4446, STATE 54764

THE FOLLOWING IS THE TEXT OF A PAMPHLET REGARDING PERUVIAN DRUG LAWS WHICH LIMA PROPOSES TO DISSEMINATE AT THE LIMA AIRPORT AND CERTAIN BORDER ENTRY POINTS TO AMERICAN CITIZENS ENTERING PERU. IT WILL ALSO BE INCLUDED AS PART OF POST'S RESPONSE TO STATE 173247 AND DEPT'S A-4446 ON GENERAL LEGAL PROBLEMS, WHICH WILL BE FORTHCOMING WITHIN THE NEXT TWO WEEKS. IF DEPARTMENT PERCEIVES NO OBJECTION TO TEXT, APPROACH WILL BE MADE TO PERUVIAN IMMIGRATION SERVICE DURING SECOND WEEK OF AUGUST REGARDING DISSEMINATION TO USCITS AT IMMIGRATION CHECK POINTS. IF OBJECTION IS FOUND POST SHOULD BE SO NOTIFIED BEFORE COB AUGUST 4.

### AMERICAN AND PERUVIAN DRUG LAWS

PERU OFFERS ITS VISITORS A WIDE RANGE OF SCENIC ATTRACTIONS AND CULTURAL EXPERIENCES WHICH DRAW INTO THE COUNTRY HUNDREDS OF THOUSANDS OF AMERICANS EACH YEAR. THE TRAVELER TO PERU, HOWEVER, SHOULD BE AWARE OF POTENTIAL DANGERS AND RISKS WHICH RESULT FROM THE USE OR POSSESSION OF DRUGS IN PERU.

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IN MARCH 1978 A NEW, MORE COMPREHENSIVE LAW REGARDING USE, POSSESSION, AND TRAFFICKING IN NARCOTICS WAS PROMULGATED. IT PROHIBITS BOTH POSSESSION OF AND TRAFFICKING IN NARCOTICS, INCLUDING COCAINE AND MARIJUANA. SENTENCES FOR POSSESSION RANGE FROM 2 TO 15 YEARS IN A FEDERAL PRISON. MOST VIOLATORS OF THE PROHIBITION AGAINST POSSESSION ARE, HOWEVER, CONSIDERED BY THE POLICE AND THE COURTS TO FALL UNDER THE PROHIBITION AGAINST

INTERNATIONAL TRAFFICKING AND CAN RECEIVE SENTENCES OF 15 YEAR'S TO LIFE. TO PERSONS IN THEIR EARLY 20'S, A 15 YEAR SENTENCE WOULD MEAN THAT BY THE TIME OF RELEASE NEARLY HALF A LIFETIME WOULD HAVE BEEN SPENT IN PERUVIAN PRISONS; FOR THE OLDER PERSON, 15 YEARS MIGHT WELL MEAN THE REMAINDER OF ONE'S LIFE. IN PERU, UNLIKE SOME OTHER NEIGHBORING COUNTRIES, FOREIGN VIOLATORS ARE NOT NORMALLY DEPORTED FOR WHAT MIGHT BE CONSIDERED RELATIVELY MINOR INFRACTIONS OF THE NARCOTICS LAWS. THUS, ARREST WITH EVEN A SMALL AMOUNT OF MARIJUANA OR COCAINE CAN RESULT IN EXTENDED IMPRISONMENT. PERSONS WHO COMMIT A CRIME IN PERU WILL BE TRIED, CONVICTED AND SENTENCED IN PERU UNDER THE PROVISIONS OF PERUVIAN LAW. AMERICANS SOMETIMES BELIEVE THAT EMBASSY OFFICIALS WILL BE ABLE TO GET THEM OUT OF JAIL BUT LEARN TO THEIR REGRET THAT THIS IS NOT THE CASE. ONCE A NARCOTICS VIOLATOR IS ARRESTED, THE EMBASSY CAN DO LITTLE OTHER THAN VISIT HIM OR HER AS SOON AS POSSIBLE; ATTEMPT TO ASSURE EQUAL AND FAIR TREATMENT UNDER PERUVIAN LAW AND IN ACCORDANCE WITH INTERNATIONALLY ACCEPTED STANDARDS; PROVIDE A LIST OF LAWYERS WHO UNDERTAKE CASES OF THIS TYPE; TRY TO ASSURE THAT FOOD AND MEDICAL TREATMENT ARE PROVIDED WHEN NEEDED; AND GENERALLY ACT IN A SUPPORTIVE ROLE MUCH AS A FAMILY WOULD IN THE CASE OF AN ARRESTED PERUVIAN.

#### POLICE STAGE

UNDER THE NEW NARCOTICS LAW, THE POLICE MAY DENY AN ARRESTEE ACCESS TO LEGAL COUNSEL, FRIENDS AND RELATIVES DURING THE

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COURSE OF THEIR INVESTIGATION, WHICH MAY LAST 15 DAYS OR LONGER; CONSULAR ACCESS IS, HOWEVER, GRANTED DURING THIS PERIOD. IF THE POLICE FIND AFTER INVESTIGATION THAT THE ARRESTEE HAS NO INVOLVEMENT, HE CAN THEN BE RELEASED. IF THE POLICE INVESTIGATION INDICATES POSSIBLE GUILT, THE ARRESTEE WILL BE TRANSFERRED FROM JAIL TO A FEDERAL PRISON FOR DETENTION AND THE CASE WILL BE FORWARDED TO AN INVESTIGATING JUDGE.

#### PERUVIAN LEGAL PROCESSES

THE PERUVIAN JUDICIAL SYSTEM IS BASED ON THE NAPOLEONIC CODE AND IS THEREFORE QUITE DIFFERENT FROM THE AMERICAN SYSTEM. THE FOLLOWING ARE GENERAL COMMENTS REGARDING THE WORKING OF THE SYSTEM AS IT RELATES TO NARCOTICS OFFENSES AND SHOULD NOT BE TAKEN TO COVER ALL CIRCUMSTANCES.

#### INVESTIGATIVE JUDGE (JUZGADO) STAGE

THE INVESTIGATING JUDGE HAS AN INITIAL PERIOD OF UP TO FIVE MONTHS, WHICH CAN LEGALLY BE EXTENDED, TO INVESTIGATE THE POLICE ALLEGATIONS OF A CRIME. BAIL/BOND PROCEDURES AND "PROVISIONAL LIBERTY" AVAILABLE FOR OTHER CRIMINAL OFFENSES ARE SPECIFICALLY

PROHIBITED DURING JUDICIAL PROCEEDINGS IN NARCOTICS CASES AND ALL FOREIGNERS ARRESTED ON SUCH CHARGES WILL REMAIN IN PRISON DURING THE INVESTIGATION. THE INVESTIGATING JUDGE MAY ORDER RELEASE IF HE FINDS INSUFFICIENT EVIDENCE TO SUPPORT THE POLICE CLAIM OF A CRIME BUT HIS DECISION MUST BE REVIEWED BY THE SUPERIOR CRIMINAL COURT (TRIBUNAL) WHICH WOULD TRY THE CASE. IF THE INVESTIGATING JUDGE FINDS THAT EVIDENCE EXISTS TO JUSTIFY TRIAL, THE CASE IS SENT FORWARD TO THE SUPERIOR COURT, THE PUBLIC PROSECUTOR REQUESTS A SENTENCE AND A TRIAL DATE IS SET. BECAUSE OF THE OVERWORKED JUDICIAL SYSTEM IT OFTEN TAKES 6 TO 15 MONTHS FOR A CASE TO REACH THE SUPERIOR COURT.

SUPERIOR COURT (TRIBUNAL) STAGE

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THE TRIAL IN FRONT OF THE SUPERIOR COURT IS ACTUALLY A SERIES OF HEARINGS BEFORE THE JUDGES WHICH MAY LAST SEVERAL MONTHS. FURTHERMORE, ANY DECISION OF THAT COURT IN NARCOTICS CASES WILL BE APPEALED BY THE PUBLIC PROSECUTOR OF PERU (FIISCAL) TO THE SUPREME COURT. THIS, OF COURSE, RESULTS IN MORE DELAY. THUS, THE ENTIRE PROCEEDINGS, FROM THE INVESTIGATING JUDGE TO THE SUPREME COURT, WHICH IN THEORY IS TO TAKE NO MORE THAN SIX OR SEVEN MONTHS, USUALLY TAKES FROM 9 MONTHS TO TWO YEARS. DURING ALL THIS TIME THE CHARGED NARCOTICS OFFENDER WILL REMAIN IN PRISON.

THE USE OF OR TRAFFIC IN DRUGS IS ILLEGAL IN ALMOST ALL COUNTRIES AND VIOLATIONS CARRY, AS A WHOLE, SEVERE PENALTIES. OFTEN THE CHARTS PRINTED IN UNDERGROUND AND DRUG-ORIENTED LITERATURE SHOWING VARIOUS COUNTRIES AS LENIENT ON THE USE OF DRUGS ARE INCORRECT. CERTAINLY, ANY SHOWING PERU AS LENIENT ARE INACCURATE. FOR FURTHER INFORMATION REGARDING DETAILS OF THE NARCOTICS LAW, AND ITS ADMINISTRATION OR THE PERUVIAN JUDICIAL SYSTEM, YOU MAY CONTACT THE AMERICAN EMBASSY, CORNER OF AVENIDA ESPANA AND GARCILASO DE LA VEGA, LIMA. SHLAUDEMAM

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